UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MICHAEL LOZANO,	§	
	§	
Plaintiff,	§	
	§	
V.	§	
	§	CIVIL ACTION NO. _______________
PET HAVEN MEMORIAL PARK, INC.;	§	
COLETTE OLIVIERI; AND JOHN DOE	§	JURY TRIAL DEMANDED
DEFENDANTS 1 through 5	§	
	§	
Defendants	§	
	§	

COMPLAINT

Plaintiff, Michael Lozano ("Lozano"), files this Complaint against Pet Haven Memorial Park, Inc. ("Pet Haven"), Colette Olivieri ("Olivieri'), (collectively, "Defendants"), and John Doe Defendants 1-10 (the 'John Doe Defendants"), showing as follows:

I. INTRODUCTION AND SUMMARY

1. This lawsuit is to recover unpaid overtime wages, liquidated damages, attorney fees, court costs, post-judgment interest, and other damages under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219 suffered by Lozano because of Defendants' failure to abide by the requirements of that statute.

2. Lozano is a non-exempt salaried employee of Defendants engaged by Defendants primarily as a maintenance worker charged with maintaining Defendants mechanical items such as equipment and rolling stock. He also picked up deceased family pets from Defendants' veterinarian customers and, with other of Defendants' employees, cremated those remains, placed them in urns, and delivered the urns to Defendants' veterinarian customers for delivery

to the pet's owner. As shown below, Pet Haven is a covered employer under the FLSA, and Defendants are joint employers. Lozano is entitled under the FLSA to receive time and one-half his hourly rate of pay for all hours he worked for Defendants in excess of 40 during any one workweek.

3. Lozano regularly worked in excess of 40 hours per workweek during his employment with Defendants. Defendants paid Lozano a fixed salary of $1900 every two weeks for all hours worked, with no overtime compensation for hours worked in excess of 40 in any and all workweeks in which he worked in excess of 40, as required by the FLSA.

II. THE PARTIES, JURISDICTION AND VENUE

a. Plaintiff Michael Lozano

4. Lozano is a natural person who resides within the Eastern District of Texas. His residence and domicile are in Denton County, Texas. He may be serviced or noticed through his undersigned attorney at the address shown below.

5. Lozano has standing to file this lawsuit.

6. Lozano worked for Defendants at its place of business located at 26770 US Highway 380, Aubrey, Denton County, Texas, 76227, from approximately June, 2011 until June, 15, 2016, when Defendants stopped paying him because of an on-the- job- injury that required surgery on June 1, 2016.

7. Lozano was paid a fixed salary, and regularly worked in excess of 40 hours per workweek, but was not paid time and one-half his regular rate of pay for each hour worked over 40 in a workweek.

b. Defendant Pet Haven Memorial Park, Inc.

8. Pet Haven is a domestic for-profit corporation incorporated under the laws of the state of Texas.

9. Pet Haven's headquarters/principal place of business is located in Aubrey, Denton County, Texas, at 26770 US Highway 380.

c. Defendant Colette Olivieri

10. Olivieri is natural persons with a residence and domicile at 119 Red Bud Drive, Krugerville, in Denton County, Texas.

11. Olivieri is the day-to-day manager of Pet Haven, as well as its secretary, treasurer and director. Based upon information and belief, Defendant Olivieri is the president, secretary, and owner of Pet Haven.

12. During the time that Lozano was employed by Defendants, each of Defendants were joint employers of Lozano within the meaning of the FLSA.

13. Olivieri had operational control over Pet Haven's compliance with the FLSA during Lozano's employment with Pet Haven. As Pet Haven's officer and director and, upon information and belief, its owner or one of its owners, Olivieri was active in the day-to-day business operations of Pet Haven and had control of the economic realities existing between Lozano and Pet Haven, including keeping records of Lozano's hours worked, setting Lozano's wages and work schedules, and directing his work.

14. Olivieri had authority to hire, fire, and discipline Lozano and all other employees of Pet Haven.

d. John Doe Defendants 1-5

15. The John Doe Defendants include any and all individuals and/or entities that are identified in discovery as employers and/or joint employers of Lozano. The John Doe

Defendants also include any and all owners and/or officers of Defendants who are identified in discovery to have operational control so as to make them employers and/or joint employers of Lozano pursuant to the FLSA.

e. Jurisdiction and Venue

16. The Court has personal jurisdiction over the Defendants based on both general and specific jurisdiction.

17. During all times relevant to this lawsuit, Defendants have done business in the state of Texas and continue to do business in the State of Texas.

18. At all times relevant to this lawsuit, Pet Haven employed, and continues to employ, two or more employees.

19. At all times relevant to this lawsuit, Pet Haven employed, and continues to employ, two or more employees who handle, sold or otherwise work on a daily basis on goods or materials that have been moved in or produced for commerce by any person. For example, such goods and/or materials include equipment, replacement parts, materials, tools, and pet caskets shipped in interstate commerce, as well as communications equipment, telephone services, telephone equipment, internet services and internet equipment.

20. On information and belief, at all times relevant to this lawsuit, Pet Haven had annual gross sales or business volume in excess of $500,000.

21. The Court has subject matter jurisdiction over this case based on federal question jurisdiction, 28 U.S.C. § 1331, because Plaintiff bases his claim on federal law, 29 U.S.C. §§ 201, *et seq.*

22. Venue is proper in the United States District Court for the Eastern District of Texas because Defendants maintain their principal place of business in this judicial district,

Lozano worked for Defendants within this judicial district, and a substantial part of the events giving rise to Lozano's claims occurred in this judicial district.

23. Venue is proper in the Sherman Division of the United States District Court for the Eastern District because Defendants' business operations are in the Sherman Division. Lozano worked for Defendants within the Sherman Division, and a substantial part of the events giving rise to Lozano's claims occurred in the Sherman Division.

III. FACTUAL BACKGROUND

24. Pet Haven owns and operates a pet cemetery and cremation business.

25. In connection with the operation of its pet cemetery and cremation business, Pet Haven employed Lozano to maintain its equipment and rolling stock and do other related work, such as driving trucks and cleaning Pet Haven's premises. During his employment with Pet Haven, Lozano was paid a fixed salary and, at all times, was a non-exempt employee under the FLSA. As a non-exempt employee, Lozano was entitled to overtime compensation for all hours worked over 40 in each and every workweek.

26. Although Lozano regularly worked in excess of 40 hours per workweek, Defendants engaged in a scheme whereby Lozano was not credited with any and all overtime hours worked at overtime rates. Lozano worked for Defendants from June, 2011, until June 15, 2016, at which time he was forced to cease reporting to work because of a job-related injury he sustained while working for Pet Haven. During the time he worked for Pet Haven, Lozano worked 11.5 hours per day Monday through Friday, 10 hours on Saturday, and approximately 9 hours on Sundays, except for the first 6 months of 2016 when his Sunday hours were reduced. Lozano was not properly compensated for any of those overtime hours.

IV. CONTROLLING LEGAL RULES

27. The FLSA generally requires that an employer employing an employee for a workweek exceeding 40 hours must compensate the employee for hours worked over 40 "at a rate not less than one and one-half times the regular rate of pay." 29 U.S.C. § 207(a)(1).

28. Lozano was not "exempt" from FLSA overtime laws.

29. At all times relevant hereto, Lozano was, or should have been, classified by Defendants as a "non-exempt" employee.

30. "Employ" under the FLSA means to suffer or permit to work. 29 U.S.C. § 203(g).

31. Failing to pay the required overtime premium for hours worked over 40 in a workweek is a violation of the FLSA. 29 U.S.C. § 216.

V. CLAIMS FOR DAMAGES

32. Lozano repeats and realleges each and every allegation of this Complaint as if fully set forth here.

33. This action is authorized and instituted pursuant to the FLSA. 29 U.S.C. §§ 201, *et seq.*

34. All conditions precedent to this lawsuit, if any, have been met.

35. At all times material to the claims made herein, Lozano was an employee of Pet Haven under the FLSA. 29 U.S.C. § 203(e).

36. At all times material to Lozano's claims made herein, Pet Haven was a covered employer under the FLSA. 29 U.S.C. § 203(d).

37. At all times material to Lozano's claims made herein, Olivieri was a joint employer of Lozano and, as such, is jointly and severally liable to Lozano, along with Pet Haven, for any damages awarded in this action.

38. Lozano is entitled to overtime compensation at one and one-half times his regular rate of pay for all hours he worked in excess of 40 in any and all workweeks. 29 U.S.C. § 207(a)(1).

39. Defendants failed to pay Lozano overtime compensation at one and one-half times his regular rate of pay for all hours worked in excess of 40 in each and every workweek.

40. Defendants' violations of the FLSA were willful within the meaning of 29 U.S.C. § 255(a). *See Singer v. City of Waco*, 324 F.3d 813, 821-22 (5th Cir. 20030 (upholding a jury verdict of willfulness).

41. Defendants have not made a good faith effort to comply with the requirements of 29 U.S.C. § 260. Accordingly, Lozano is entitled to liquidated damages.

VI. JURY DEMAND

42. Lozano demands trial by jury.

VII. DAMAGES AND PRAYER

43. Plaintiff Lozano asks the Court to issue a summons for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants, jointly and severally, for the following:

a. Actual damages in the amount of unpaid overtime wages;

b. Liquidated damages under the FLSA;

c. Post-judgment interest;

d. Court costs;

e. Reasonable attorney's fee; and

f. All other and further relief to which Plaintiff is entitled.

Respectfully submitted,

/s/Roger D. Marshall
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